

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TONIA BABBITT,

Plaintiff(s),

V.

**CORPORATION OF THE PRESIDING
BISHOP OF THE CHURCH OF LATTER-
DAY SAINTS, et al.,**

Defendant(s).

Case No.: 2:18-cv-02076-RFB-NJK

ORDER

[Docket No. 52]

Pending before the Court is Plaintiff's motion for an extension of time to serve Defendant Jacobs¹ and for leave to serve Mr. Jacobs by publication. Docket No. 52. Defendants filed a response in opposition and Plaintiff filed a reply. Docket Nos. 53, 54. The motion is properly denied without a hearing. *See Local Rule 78-1.* For the reasons discussed below, the motion to extend the time to serve Mr. Jacobs is **GRANTED**, and the request to serve Mr. Jacobs by publication is **DENIED WITHOUT PREJUDICE**.

I. Motion to Extend Time for Service

Where good cause is shown, the time for serving the complaint is extended for an appropriate period. *See Fed. R. Civ. P. 4(m).* The motion establishes sufficient cause to extend the time for effectuating service on Mr. Jacobs to July 22, 2019.

¹ The amended complaint names “Isiah Jacobs” as a Defendant, Docket No. 33, but some evidence in the record seems to indicate that his name is actually “Isaiah Jacobs,” Docket No. 53-1.

1 **II. Motion to Leave to Serve by Publication**

2 Plaintiff also seeks leave to serve Mr. Jacobs by publication. Service by publication is
3 generally disfavored because substituted service implicates a defendant's constitutional right to
4 due process. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15;
5 *Trustees of the Nev. Resort Assoc.—Int'l Alliance of Theatrical Stage Employees & Moving*
6 *Picture Machine Operators v. Alumifax, Inc.*, 2013 U.S. Dist. Lexis. 106456, *2 (D. Nev. July 29,
7 2013).

8 Service is to be provided pursuant to the law of the forum state, or in which service is made.
9 *See Fed. R. Civ. P. 4(e)(1)*. Nevada law permits service by publication if the plaintiff cannot, after
10 due diligence, locate the defendant. *See Nev. R. Civ. P. 4.4(c)(1)(a)*. Due diligence is that which
11 is appropriate to accomplish actual notice and is reasonably calculated to do so. *See Abreu v.*
12 *Gilmer*, 115 Nev. 308, 313 (1999) (citing *Parker v. Ross*, 117 Utah 417, 217 P.2d 373, 379 (Utah
13 1950)). Courts may consider the number of attempts made to serve the defendant at his residence
14 and other methods of locating the defendant, such as consulting public directories and family
15 members. *See, e.g., Price v. Dunn*, 787 P.2d 786, 786-87; *Abreu* 115 Nev. at 313; *McNair v.*
16 *Rivera*, 110 Nev. 463, 874 P.2d 1240, 1241 (Nev. 1994).

17 Here, Plaintiff made a single attempt to serve Mr. Jacobs at his last known address; left
18 messages after calling an unconfirmed telephone number; searched social media; looked for
19 records at the assessor's office and the Department of Motor Vehicles; and reviewed criminal
20 records. Docket No. 52-1. Plaintiff was informed by a third-party that in August 2018, Mr. Jacobs
21 moved to "the Salt Lake area." *Id.* Nonetheless, Plaintiff has not documented efforts to locate Mr.
22 Jacobs in Utah, which is fatal to her request to serve by publication. *Cf. Bank of N.Y. Mellon v.*
23 *Seven Hills Master Cnty. Ass'n*, 2016 U.S. Dist. Lexis 144077, at *3 (D. Nev. Oct. 18, 2016)
24 (denying motion for service by publication because, given information that the unserved defendant
25 resides in Lebanon, attempts to locate and serve him there were required to establish diligence).²

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28 ² Plaintiff's motion and supporting documentation is not well-developed. To the extent she
has made efforts to locate Mr. Jacobs in Utah, those efforts are not clearly specified in the motion
or supporting documentation.

1 It is also not entirely clear from the record whether Plaintiff has been searching for Mr. Jacobs
2 using the correct spelling of his first name. *Compare* Docket No. 33 with Docket No. 53-1.³

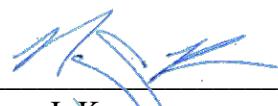
3 These circumstances do not justify allowing service by publication.

4 **III. Conclusion**

5 Accordingly, the Court **GRANTS** the motion to extend the deadline to effectuate service
6 on Mr. Jacobs, and **DENIES WITHOUT PREJUDICE** the request for leave to serve Mr. Jacobs
7 by publication. The deadline to serve Mr. Jacobs is extended to July 22, 2019.⁴

8 **IT IS SO ORDERED.**

9 Dated: June 21, 2019

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11 Nancy J. Koppe
United States Magistrate Judge

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23 ³ The reply speculates that the process server “could search for Mr. Jacobs based on either
24 spelling.” Reply at 2. Whether someone “could” search and whether someone “did” search are
entirely different matters. No showing has been made that the process server searched for Mr.
Jacobs using both potential spellings of his first name.

25 ⁴ In violation of the local rules, Plaintiff includes in her reply a request to file a supplement
26 to the briefing on the motion to dismiss. *See* Reply at 2-3. A reply brief is not an appropriate
27 vehicle to request relief from the Court. *See, e.g.*, Local Rule 7-2(a) (addressing the manner in
which motions must be made). Counsel are also not permitted to include various divergent issues
28 in a single filing. *See* Local Rule IC 2-2(b). Given that this request was raised improperly, the
Court expresses no opinion on the merits of the request.